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NO. 83-1304

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983

EMMA LEE PAUL,

Petitioner,

v.

ALEX HALEY, DOUBLEDAY & COMPANY, INC.;
DOUBLEDAY PUBLISHING CO., INC.; AMERICAN
BROADCASTING COMPANIES, INC.; AND
DELL PUBLISHING CO., INC.,

Respondents.

ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF OF PETITIONER

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In their briefs in opposition to the
Petition for Certiorari, Respondents rely

on Section 205(a) of the New York Civil Practice Law and Rules to support their position that the first point of the Petition should be denied. Although Respondents do little more than cite the New York statutory provision which tolls the statute of limitations for six (6) months after the dismissal of an action which has been timely commenced, their position appears to be that Petitioner is fully protected from being foreclosed from pursuing her state causes of action because the time period for filing may have run during the pendency of the federal action. In December 1983, Petitioner filed suit against Respondents Doubleday, Haley and ABC in the Supreme Court of New York, in which she stated causes of action for unfair competition, fraud, breach of express and implied contract

and personal injury, all of which are based on the same transactions and occurrences which formed the basis of her action in the courts below in this case. Paul v. Haley, et. al., Index Nos. 313/1984, 3095/1984. */ In February, 1984, prior to their filing Oppositions to Petitioner's Petition in this Court, Respondents filed Motions to Dismiss Petitioner's complaint

*/ This Court may take judicial notice of related proceedings in another court, especially where they are between substantially the same parties and on the same subject matter. Butler v. Eaton, 141 U.S. 240, 11 S. Ct. 985, 35 L. Ed. 713 (1891); Craemer v. Washington, 168 U.S. 124, 185 S. Ct. 1, 42 L. Ed. 407 (1897); Wells v. U.S., 318 U.S. 257, 63 S. Ct. 582, 87 L. Ed. 746 (1943); Cheasapeake & Ohio Railway Co. v. U.S., 571 F.2d 1190 (D.C. Cir. 1977); Coleman v. Burnett, 477 F.2d 1187 (D.C. Cir. 1973). See also Rule 22.6 of this Court which allows a party to bring intervening matters not available at the time of the party's last filing to the attention of the Court.

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on various grounds, none of which were based on the running of any statute of limitations. In early March Petitioners filed their Oppositions herein assuring this Court that Petitioner would have no problem seeking relief in state court due to the fact that the time period for filing may have run during the pendency of the federal action. Despite the position presented by Respondents to this Court, within one week after filing their Opposition, Respondents Doubleday, Haley and ABC filed a Motion in the New York Supreme Court seeking to have 3 of the 9 counts in Petitioner's complaint dismissed as to all of the Defendants in that case and 4 others dismissed as to some of the Defendants on the grounds that the applicable statue of limitations had run in 1982, during the pendency of Petitioner's

federal action. By such action, Respondents Doubleday, Haley and ABC appear to have conceded that the statute of limitations may not be tolled by CPLR §205(a) and that the issue of whether the District Court should have retained its pendant jurisdiction is an important one for consideration by this Court.

For the reasons stated the Petition for Certiorari should be granted. Alternatively, action on the Petition should be stayed until after disposition of the Motion to Dismiss on statute of limitations grounds now pending in the State Court.

Respectfully submitted,

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